IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4039/2004
(Ganesh Ram Vs. The Child Development Project Officer & Anr.)

Date of Order : 11/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ram Kishore Soni for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has assailed the award dated 27.8.2003 (Annex.5) passed by Labour Court, Jodhpur.

It is contended by learned counsel for the petitioner that the petitioner was an employee of the non-petitioner and the Labour Court fell in error in answering the reference against the petitioner holding therein that the petitioner failed to establish the relationship of employer and employee.

Learned Deputy Govt. Advocate appearing for the respondents submits that the respondent labour court was justified in answering the reference against the petitioner workman as the petitioner workman has never been engaged

directly by the respondents but the work was given on contract through the contractor and it was the contractor who engaged the petitioner for the work and therefore, there had not been a direct relation of employer and employee between the respondents and the petitioner. If at all the petitioner had worked then he worked under the instructions and at the instance of the contractor to whom the respondents assigned the work on contract basis and the persons engaged on contract basis through contractor does not fall within the definition of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 (for short 'the ID Act' hereinafter) and therefore, there arise no question of violation of Section 25-F of the ID Act.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

From the material placed on record before the respondent labour court more particularly letter dated 21.9.1996 by Regional Dy. Director, Women and Child Development Department, it is clear that open tenders were invited for executing the work on contract basis and in pursuance thereof, a contract was given to the contractor for which a certificate has been placed on record by the respondents. The contract was given to Berojgar Utthan Seva Samiti, Nagaur which engaged the petitioner and other persons to execute the work given on contract. The Berojgar Utthan Seva Samiti, Nagaur, through its

Manager, Gautam Chand Kothari submitted the letter in this respect which has been placed on record by the respondents. Even in the attendance register placed on record clearly goes to show that the attendance register relates to the work given on the contract basis and the attendance of workmen engaged by the contractor find recorded in that register, a note to this effect has been mentioned in the register which has been placed on record. From the material on record, it has also been established that the contract was given to the contractor i.e. Berojgar Utthan Seva Samiti, Nagaur for a fixed term and by efflux of time, the contract came to an end. Thus, from the material available on record, the labour court came to the conclusion that the petitioner has failed to establish the relationship of employee and employer between the petitioner and the respondents, on the contrary, the respondents have established from the reliable evidence that the petitioner was engaged by the contractor to whom the work on contract was given by the respondents.

In this view of the matter, I do not find any merit in the writ petition. The writ petition is, therefore, dismissed. No order as to costs.

(H.R.PANWAR),J.

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